



# Wyoming Department of Agriculture

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April 27, 2005

Air Docket, Environmental Protection Agency  
Mailcode: 6102T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Docket ID No. OAR-2004-0237

Dear Environmental Protection Agency:

Following are the comments from the Wyoming Department of Agriculture (WDA) on the Environmental Protection Agency (EPA) Animal Feeding Operations (AFOs) Consent Agreement and Final Order.

Our comments are specific to our mission within state government: to be dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources, and welfare of our citizens. We believe it's important we are kept informed of proposed actions and decisions, and continue to be provided the opportunity to express pertinent issues and concerns.

The WDA supports the efforts of the EPA in their pursuit to have consistent, scientifically based information and methods to address air quality throughout the United States. The monitoring study has the basic framework to create credible data which a vast majority of agencies, producers and scientists can use to create positive outcomes.

While we support the use of credible scientific research, we can not support the EPA's current proposal of the Air Compliance Agreement—"Agreement." The proposed Agreement is being offered to egg, broiler chicken, turkey, dairy and swine AFOs. The state of Wyoming's agriculture industry is primarily cattle and sheep production on open range. There are, however, a number of small swine and dairy operations in our state, which could potentially meet your AFO criteria. There are many fatal errors in this proposal and we suspect a very low level of participation in the Agreement throughout the nation.

The Agreement is strongly geared towards large AFOs which have the financial resources to "buy their way out." The AFOs who volunteer and participate in this Agreement are seeking indemnity without knowing whether they are liable. The civil penalty the EPA would like to inflict upon the volunteering participants appears to be extortion.

According to your document, "AFOs that choose to participate will agree to pay a civil penalty which is based on the size of the AFO." Perhaps the word "penalty" is not the correct term if AFOs are going to be interested in volunteering. The current Agreement is written so the volunteering AFOs prematurely admit to having committed a crime or offense. However, according to your document on page 4959, "Participation in the Air Compliance Agreement and payment of a penalty will not be an admission of liability by an AFO."

A driving force behind the Agreement is to subject AFOs to pay for a rather large and expensive study. If the scientific methodology does not currently exist, then the EPA should not be able to scientifically determine if an AFO can or can not be compliant with the Clean Air Act (CAA), section 103 of Comprehensive Environmental Response Compensation and Liability Act (CERCLA), or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA).

The amount of money the Agreement could generate from one large AFO is staggering. For example, one AFO with 200 farms will pay \$100,000 for the civil penalty, plus an additional \$2,500 per farm for the nationwide emission monitoring study fee. Multiply the \$2,500 by 200 farms equals an additional \$500,000. Thus one AFO is paying \$600,000 for something they may not have been liable for. EPA's Federal Register notice fails to tell us what the penalty money will actually be used for. Only the monitoring payment is earmarked for research use. We suggest you reevaluate your payment and penalty fee schedules and have some plan for EPA to provide matching funds. The EPA could use the funds already collected from litigation or fines to AFOs and use the money to support the monitoring study.

*"AFOs that choose to participate in the Air Compliance Agreement and meet all its conditions will receive from EPA a limited release and covenant not to sue from liability for certain past and ongoing CAA, CERCLA, and EPCRA violations. The release and covenant not to sue will cover an AFO's liability for failing to comply with certain provisions of CERCLA, EPCRA, and the CAA up to the time the AFO reports its releases under CERCLA or EPCRA and applies for and receives the requisite CAA permits."*

There are some key phrases in the preceding paragraph that every AFO might want to consider. For example "all its conditions," "limited release," and "certain." The terms of agreement are too vague for any AFO to agree to this. Additionally, a voluntary AFO may escape being sued by the EPA, but the Agreement fails to safeguard them from being sued by a third party. The EPA should be very familiar with this method of protest by environmental, non-profit agencies and associations.

The large AFOs who do sign the Agreement are incurring a substantial expense to cover the monitoring study fees, but all AFOs, regardless of their participation level or size, receive a benefit in the end. This is just one more flaw in this program. We believe another flaw is the 180 day extension for AFOs who can prove they are converting waste to energy. There is no possibility of a smaller AFO to receive this exact same benefit since it takes a very large amount of waste to convert to energy. Again, only large AFOs are intended for this Agreement.

4/27/2005

EPA—AFOs Consent Agreement and Final Order

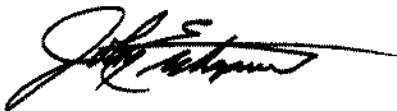
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There are additional concerns with the Agreement and the use of funds. The monitoring study should be done prior to charging AFOs. There is clearly a concern the Agreement will not generate enough money to fund the monitoring study. There will be participating AFOs who pay their penalties and then there will not be enough money to fund the study. The EPA could be looking to these AFOs for additional funding. Additionally, if the non-profit agency created for the study goes defunct, there should be a contingency plan in place. The EPA is again allowing this plan to be too vague and open-ended. We suggest the funds be re-distributed back to the participating AFOs. There should also be a budget created and in place before the study is implemented. EPA proposes to collect money randomly and then create a budget based on the amount of funds generated. We strongly disagree with your current proposal's use of funds or the lack of.

We find the Air Compliance Agreement to be a poor way to fund a research project such as the nationwide emissions monitoring study. We recommend seeking funds from a variety of sources. Some of the funds collected should be used to support AFOs as an incentive to comply with the multitude of regulations. The proposed study has many positive aspects. We encourage the EPA to work with state and local agencies, universities, and other interested parties to be involved in the study. The data collected should be applicable to all levels of AFOs in different locations across the nation. We look forward to seeing the progress this study will have in the future.

Thank you for the opportunity to comment.

Sincerely,



John Etchepare  
Director

JE/jw

Cc: Governor's Planning Office  
Wyoming Stock Growers Association  
Wyoming Wool Growers Association  
Rocky Mountain Farmers Union  
Wyoming Association of Conservation Districts  
Wyoming Farm Bureau Federation  
Wyoming State Grazing Board  
Wyoming Dept. of Environmental Quality